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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: MAR 22 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. The applicant married a U.S. citizen on January 11, 2001 and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Acting District Director, dated April 4, 2003.

On appeal, counsel asserts that Citizenship and Immigration Services erred in denying the applicant's application for waiver of inadmissibility because the applicant provided sufficient evidence to demonstrate that his U.S. citizen wife would suffer extreme hardship if the applicant were denied admission to the United States. *See* Addendum to I-601 Notice of Appeal, dated April 18, 2003.

In support of these assertions, counsel submits Motion to Reconsider and Appeal of Application for Form I-601 Waiver, dated June 16, 2003; a declaration of the applicant's wife, dated June 13, 2003; a declaration of the mother of the applicant's wife, dated June 12, 2003; a copy of the photograph page of the U.S. passport of the mother of the applicant's wife; a declaration of the father of the applicant's wife, dated June 12, 2003; a declaration of the sister of the applicant's wife, dated June 12, 2003; a declaration of the uncle and aunt of the applicant's wife, dated June 12, 2003; a letter from another aunt and uncle of the applicant's wife, dated May 11, 2003; letters of support from additional family members of the applicant's wife; letters of support from friends of the applicant and his wife; a letter from a chiropractor treating the applicant and his wife; a letter from a theatrical instructor of the applicant's wife; a letter from an academic instructor and voice teacher of the applicant's wife; copies of the photograph pages of the U.S. passports issued to the authors of the majority of the above listed letters and declarations; a list of the financial expenses of the applicant's wife and copies of 14 documents addressing country conditions in Mexico.

The record also contains a declaration of the applicant's wife, dated March 1, 2003; a copy of the U.S. birth certificate of the applicant's wife; a declaration of the applicant, dated March 1, 2003; a letter from the parents of the applicant's wife, dated February 18, 2002; a letter from a licensed psychotherapist treating the applicant and his wife, dated February 14, 2002; a letter from the sister of the applicant's wife, dated January 16, 2002; a letter from the aunt of the applicant's wife, dated February 18, 2002; a letter from the godmother of the applicant's wife, dated February 18, 2002; a letter from the godfather of the applicant's wife, dated February 11, 2002; letters from theatrical professionals who have worked with the applicant's wife; a letter from an instructor of the applicant's wife, dated January 20, 2002; letters from two professors of the applicant, dated December 26, 2001 and February 19, 2002, respectively; a letter from the employer of the applicant, dated February 14, 2002; a copy of the payroll journal for the applicant's place of employment for three weeks in December 2000; a letter verifying the employment of the applicant; a copy of a bank account statement for the applicant; a copy of a rent check of the applicant; a letter verifying the employment of the

applicant's wife; a copy of a pay stub for the applicant's wife and copies of photographs of the applicant and his wife. The entire record was considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant obtained a fraudulent Mexican passport in Mexico City, Mexico and used it to enter the United States on February 5, 1996.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of departing from the United States as the applicant's spouse has lived her entire life in the United States; her entire family resides in the United States; she only speaks English and she has an established career in the United States. *See* Motion to Reconsider and Appeal of Application for Form I-601 Waiver, dated June 16, 2003. Counsel asserts that the applicant's wife has demonstrated much talent and potential in her chosen professional field of

acting and owing to her inability to speak Spanish, her continued success would be impossible in Mexico. *Id.* at 20-21. *See also* Letter from [redacted] dated April 17, 2003 and Letter from Judy Hubbell, dated April 29, 2003 (describing the applicant's wife as "one of the most significant young talents in Bay Area Theater today"). Further, the applicant's wife traveled to Mexico City in January 2002 and spending time with the applicant's family there, found the conditions to be unacceptable. She states, "The neighborhood they live in is filled with trash ... My lungs hurt from the pollution ... upon returning to the United States I felt very depressed thinking about the life my new family is living down in Mexico." *See* Declaration of [redacted] dated June 13, 2003. Counsel provides copies of 14 articles and reports addressing social, political and economic conditions in Mexico to support the assertion that the applicant's wife would be unable to survive financially, emotionally and culturally in Mexico and would be deprived of the rights and privileges that she enjoys as a citizen and resident of the United States, including the ability to partake in legitimate elections. *See* "How to Vote Twice in Mexico," *The Washington Post*, May 27, 2000.

Counsel also asserts extreme hardship to the applicant's wife if she remains in the United States without the applicant. The mother of the applicant's wife indicates that there is a history of mental health problems in her family including the commitment of the grandmother of the applicant's wife to a state mental hospital for a five-year period. *See* Declaration of [redacted] dated June 12, 2003. The mother of the applicant's wife asserts that her daughter has inherited her mother's limited ability to "function in difficult or stressful times." *Id.* The applicant's wife herself recounts instances in which she has sobbed uncontrollably and been forced to leave her place of employment owing to her inability to deal with common disruptions that are a part of everyday life. *See* Declaration of [redacted] dated June 13, 2003.

The AAO notes that although counsel provides testimony from family members attesting to the poor coping skills of the applicant's wife, the record contains only one letter from a mental health professional; a psychotherapist who treats the applicant and his spouse states that relocation to Mexico or separation from the applicant would likely lead the applicant's wife to experience anxiety and mood disorders. *See* Letter from Barbara Gabriel, dated February 14, 2002. The AAO notes that the psychotherapist treating the applicant and his wife does not indicate any predilection toward mental instability by the applicant's wife and does not lend support to the theory that she has inherited emotional or psychological problems from family members. The treating psychotherapist makes no reference to any of the conditions or symptoms identified by counsel and the mother of the applicant's wife as indicative of the mental instability of the applicant's wife. *Id.* Further, the AAO notes that the presence of the applicant does not appear to dissipate the effects of his wife's fragility as his wife recounts emotional episodes occurring "even before we got the bad news that our request for waiver of inadmissibility had been denied." *See* Declaration of Carolyn Zola. Therefore, the AAO finds that, considered with the assessment of a mental health professional, the predictions of family members offered by counsel regarding the emotional instability of the applicant's wife indicate hardship not rising to the level of extreme.

Counsel contends that the applicant's wife will suffer financial hardship if the applicant is denied a waiver of inadmissibility to the United States. In support of this assertion, counsel submits an accounting of the expenses of the applicant's wife and statements from various family members and colleagues of the couple. The applicant's wife states that it would be difficult for her to shoulder all of the expenses that she and her husband currently share. She asserts that she would have to rent a "small room in an unsafe neighborhood to continue living and supporting myself. This would pose a physical danger to me as well" *Id.* In light of the overwhelming familial support evidenced in the record as well as the indignation expressed by friends,

colleagues and relatives alike at the thought of the applicant's wife living in poverty in Mexico, the argument that the applicant's wife will be left, in the absence of the applicant, to face "physical danger" in the United States while surrounded by the same family members and friends is highly unpersuasive. The record establishes that the applicant's wife has proven able to maintain employment and pursue her acting career simultaneously with the assistance of the applicant. *Id.* The AAO acknowledges that the applicant's spouse may not be able to advance her education in the manner or at the speed currently employed without the applicant's presence, but a finding of extreme hardship cannot be based on this fact alone. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.